

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-1282**

Jon Gregory Heymer, et al.,
Appellants,

vs.

Heymer Limited Partnership,
Respondent,

Jeffrey Scott Heymer, et al.,
Respondents.

**Filed April 13, 2026
Affirmed in part, reversed in part, and remanded
Larson, Judge**

Isanti County District Court
File No. 30-CV-24-990

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Considered and decided by Johnson, Presiding Judge; Larson, Judge; and Schmidt,
Judge.

NONPRECEDENTIAL OPINION

LARSON, Judge

Appellants commenced a civil action asserting six claims against respondents. Appellants challenge the district court's decision to grant respondents' motion for judgment on the pleadings based upon the district court's determination that a six-year statute of limitations barred their claims. Because we agree with appellants that their judicial-dissolution claim and part of their breach-of-fiduciary-duty claims are not barred by a statute of limitations, we affirm in part, reverse in part, and remand for further proceedings.

FACTS

Because this appeal arises from the district court's decision to grant respondents' motion for judgment on the pleadings, we accept as true the following alleged facts. *See Halva v. Minn. State Colls. & Univs.*, 953 N.W.2d 496, 500 (Minn. 2021).

Rae ("Jim") Heymer and Mary Anne Heymer were married and had four sons, appellants Jon ("Greg") Heymer, James ("Mike") Heymer, and Jay ("Terry") Heymer, and respondent Jeffrey ("Scott") Heymer.¹ In 1949, Jim and Mary Anne purchased 120 acres of land and began a farming business. Then in 1960, Jim and Mary Anne formed respondent Red Bridge Farms (RBF) as the corporate entity of their farming business and placed the land in RBF. Over time, RBF used the land to develop a turkey-production

¹ Because many of the individuals at issue in this case share a surname, when discussed individually, we refer to them using their preferred first names. Rae J. Heymer and his sons prefer to use the names Jim, Greg, Mike, Terry, and Scott.

operation in addition to using the tillable acreage to grow grain. Today, Scott and his wife, respondent Lennea Heymer, operate the farming business, and Scott is the majority shareholder and president of RBF.²

In 2002, Jim and Mary Anne formed respondent Heymer Limited Partnership (HLP) and executed the partnership agreement. At the time they formed HLP, Jim and Mary Anne were the general partners, and Scott, Greg, Mike, and Terry were the limited partners. Later that year, HLP purchased real-estate fixtures from RBF, Jim, and Mary Anne. HLP also acquired the land RBF owned. The purchase price included a promissory note (2002 promissory note) and assumed a debt RBF owed to Jim and Mary Anne. HLP then entered into an agreement to lease its land to RBF (2002 lease). RBF paid rent to HLP based on its turkey production and tillable acres. RBF's rent has been, and continues to be, HLP's primary revenue source.

In 2007, Mary Anne assigned her general partnership interest in HLP to Scott. And despite legal advice to the contrary, HLP has made no distributions to its limited partners since 2011.

In February 2015, Jim and Scott, then HLP's general partners, amended the 2002 lease (2015 amendment) and replaced the 2002 promissory note (2015 promissory note).³

² The complaint does not allege when Scott became the majority shareholder and president of RBF or what role, if any, appellants have in RBF.

³ The new promissory note incorporated the remaining balance of the 2002 promissory note along with the outstanding debt owed to Jim and Mary Anne. Appellants assert that there is no documentation for the debt owed to Jim and Mary Anne.

The 2015 amendment significantly reduced RBF’s rent under the lease agreement. Scott announced the amendment at a partnership meeting in January 2016.

Sometime in 2017, Jim assigned his general partnership interest in HLP to Lennea. Then in August 2017, Scott and Lennea, as HLP’s general partners, obtained a \$750,000 mortgage against the land. Scott and Lennea did not inform the limited partners of the mortgage or include the mortgage in HLP’s financial reports.

In May 2024, appellants demanded that HLP take action against the general partners for breach of fiduciary duty and breach of contract, but no such action was taken. This lawsuit commenced several months later when appellants—in their role as HLP’s limited partners—served respondents with a summons and complaint.⁴ Appellants served Scott, Lennea, and RBF on October 22, 2024, and HLP on October 23, 2024.

In December 2024, appellants filed this civil action in district court. Appellants alleged that the 2015 amendment reduced RBF’s rent such that HLP can no longer pay down the debt under the 2002 and 2015 promissory notes.⁵ Appellants contended that through this series of transactions and non-disclosures of financial information, RBF, Scott, and Lennea have “systematically starved HLP for the financial benefit of RBF” and “have

⁴ Minnesota has a long-standing practice, known as hip-pocket service or pocket service, that has “permitted a party to commence an action simply by service of the summons upon the defendant.” *Gams v. Houghton*, 884 N.W.2d 611, 614 (Minn. 2016). Although amended, the Minnesota Rules of Civil Procedure have preserved this practice, providing that a civil lawsuit is commenced when the plaintiff serves the defendant with the summons and a copy of the complaint. *See* Minn. R. Civ. P. 3.01, .02; *see also MCHS Red Wing v. Converse*, 961 N.W.2d 780, 784 (Minn. App. 2021) (noting that the amendments to the rules were intended to “preserve the benefits of hip-pocket service”).

⁵ Approximately nine percent of the outstanding debt has been paid since the parties entered the lease in 2002.

completely eliminated” appellants’ benefit as limited partners to RBF’s advantage. Based upon these allegations, appellants brought six claims: (1) derivative breach of fiduciary duties; (2) direct breach of fiduciary duties; (3) derivative breach of contract; (4) request for judicial dissolution; (5) direct and derivative unjust enrichment; and (6) request for a declaratory judgment that terminates the lease agreement between HLP and RBF and determines the validity of a debt between HLP and RBF.

Respondents answered the complaint, raising several affirmative defenses, including, as relevant here, that appellants’ claims were barred by a six-year statute of limitations. Respondents then filed motions for judgment on the pleadings under Minn. R. Civ. P. 12.03, on this basis. The district court granted respondents’ motions. After judgment was entered, appellants brought a motion to vacate the judgment and amend their complaint. A hearing was held on appellants’ motion, which the district court denied.

This appeal follows.

DECISION

Appellants challenge the district court’s decision to grant respondents’ motion for judgment on the pleadings. On appeal from a district court’s decision to grant a motion for judgment on the pleadings under Minn. R. Civ. P. 12.03, “[w]e review de novo whether the complaint sets forth a legally sufficient claim for relief.” *Zutz v. Nelson*, 788 N.W.2d 58, 61 (Minn. 2010) (quotation omitted). “We accept the facts alleged in the complaint as true and construe all reasonable inferences in favor of the nonmoving party.” *Halva*, 953 N.W.2d at 500. We also consider statements or documents incorporated as exhibits into the pleadings. Minn. R. Civ. P. 10.03 (“A copy of any written instrument which is an

exhibit to a pleading is a part of the statement of claim or defense set forth in the pleading.”).

Appellants contend the district court erred in its application of the relevant statutes of limitations. A statute-of-limitations defense may be raised in a motion for judgment on the pleadings. *Oreck v. Harvey Homes, Inc.*, 602 N.W.2d 424, 427-28 (Minn. App. 1999), *rev. denied* (Minn. Jan. 25, 2000). “[A] plaintiff need not anticipate and rebut an affirmative defense in their complaint to survive a motion to dismiss based on that defense.” *Hoskin v. Krsnak*, 25 N.W.3d 398, 408-09 (Minn. 2025). Rather, “a motion to dismiss based on an affirmative defense may be granted only if the allegations in the complaint, construed in the plaintiff’s favor, establish an un rebuttable defense.” *Id.* at 409.

We review the construction and application of a statute of limitations de novo. *Park Nicollet Clinic v. Hamann*, 808 N.W.2d 828, 831 (Minn. 2011). When determining whether a limitations period has expired, we first “determine which statute of limitations applies to the claims asserted.” *Id.* at 832. We next determine “when the statute began to run.” *Id.* Finally, we determine whether the suit was initiated before expiration of the limitations period. *See* Minn. Stat. § 541.05 (2024) (requiring an action to be “commenced” within a specified timeframe); *see also* Minn. R. Civ. P. 3.01 (stating that an action is “commenced” upon service of the summons).

Here, appellants specifically argue the district court erred when it determined the following claims were barred by the relevant statute of limitations: (1) direct and derivative breach of fiduciary duty; (2) derivative breach of contract; (3) judicial dissolution;

(4) direct and derivative unjust enrichment; and (5) declaratory judgment. We address the claims in turn.

I.

Appellants first challenge the district court’s decision that their direct and derivative breach-of-fiduciary-duty claims under Minn. Stat. § 321.0408 (2024) were barred by the six-year statute of limitations in Minn. Stat. § 541.05, subd. 1(2) (2024). Under Minn. Stat. § 541.05, subd. 1(2), an action based “upon a liability created by statute” must be commenced within six years. The statute of limitations begins to run when a cause of action accrues. *See Frederick v. Wallerich*, 907 N.W.2d 167, 173 (Minn. 2018). For breach-of-fiduciary-duty claims, we follow the “some damage” rule of accrual. *Hansen v. U.S. Bank Nat’l Ass’n*, 934 N.W.2d 319, 327 (Minn. 2016). Under this rule, “[s]ome damage in the form of financial liability accrues when the resulting liability is immediate, concrete, compensable, noncontingent, and at least partly ascertainable.” *Id.* at 328. But where the financial liability is contingent, the “harm does not constitute damages for the purposes of the statute of limitations because the damages do not accrue *unless and until* the contingency actually happens.” *Id.* at 329 (emphasis added).

On appeal, appellants argue the district court erred when it dismissed the direct and derivative breach-of-fiduciary-duty claims. Specifically, appellants contend that the complaint, and incorporated documents, establish that the 2015 amendment was renewed “annually” and, therefore, the financial harm was contingent upon annual renewal of the lease. For this argument, appellants rely on the termination provision in the 2015 amendment, which provides: “On the one-year anniversary hereof and on each

succeeding annual anniversary hereof provided that the [t]enant shall have the right to renew this Lease for successive one-year periods upon the terms and conditions set forth below.” Respondents disagree, maintaining that application of the “some damage” rule is dispositive because appellants learned of the 2015 amendment in January 2016. Accordingly, respondents say, the harm was at least partly ascertainable in January 2016, so appellants needed to bring their claim on or before January 2022.

We agree with appellants that, taking all inferences in their favor, the termination provision in the 2015 amendment creates a contingent provision.⁶ *See Hansen*, 934 N.W.2d at 326 (stating district court can dismiss claim only if “there is no way to construe the alleged facts, and the inferences drawn from those facts, in support of the [nonmoving party]’s claim”). Each year, the alleged financial harm to the appellants would not occur “unless and until” the tenant renewed the 2015 amendment. Accordingly, any damage to HLP under the terms of the lease was contingent upon the successive operation of the lease agreement. And we can readily infer from the complaint and the incorporated documents that between 2016 and 2024, the lease was annually renewed.

For these reasons, we conclude the contingency exception to the “some damage” rule applies to the breach-of-fiduciary-duty claims in this case. Because the contingency occurred annually when the 2015 amendment was renewed, we affirm the district court’s

⁶ The parties disagree over whether the terms of the lease create an “extension” or a “renewal”; however, neither party cites a case where this legal distinction is relevant for application of the statute of limitations in the context of a breach-of-fiduciary-duty claim. And moreover, the distinction is irrelevant here because, under either classification, the harm is still a contingent one.

application of the six-year statute of limitations in Minn. Stat. § 541.05, subd. 1(2), as it relates to damages accrued before October 22, 2018, for Scott, Lennea, and RBF, and before October 23, 2018, for HLP. But we reverse the district court’s application of the statute of limitations to the breach-of-fiduciary-duty claim for damages accrued six years before the date of service—specifically, damages accruing on or after October 22, 2018, for Scott, Lennea, and RBF, and October 23, 2018, for HLP.

II.

Appellants next challenge the district court’s application of the six-year statute of limitations in Minn. Stat. § 541.05, subd. 1(2), to their breach-of-contract claim. When Minn. Stat. § 541.05, subd. 1(2), is applied to a breach-of-contract claim, the limitations period begins to run when the alleged breach occurs, even if the plaintiff is unaware of the facts constituting the breach. *Jacobson v. Bd. of Trs. of the Tchrs. Ret. Ass’n*, 627 N.W.2d 106, 110 (Minn. App. 2001), *rev. denied* (Minn. Aug. 15, 2001); *see also Levin v. C.O.M.B. Co.*, 441 N.W.2d 801, 803 (Minn. 1989) (“[I]t has long been settled that a cause of action for breach of contract accrues on the breach of the terms of the contract.”).

In the complaint, appellants alleged that Scott and Lennea breached the partnership agreement when they engaged in transactions for the benefit of themselves and RBF, and to the detriment of HLP.⁷ Specifically, appellants contend that Scott breached the

⁷ To the extent appellants argue that Scott and Lennea breached the partnership agreement because the organizational structures of HLP and RBF create a conflict of interest, we note that HLP’s partnership agreement specifically permitted this conflict of interest, and such allowance is generally permissible under Minnesota law. *See* Minn. Stat. § 323A.0408(e) (“A general partner does not violate a duty or obligation under this chapter or under the partnership agreement merely because the general partner’s conduct furthers the general

partnership agreement when he signed the 2015 amendment, and Scott and Lennea breached the partnership agreement when they obtained the 2017 mortgage.

We conclude the alleged breaches all occurred outside the applicable limitations period. The alleged breaches occurred in 2015,⁸ when the lease was amended, and 2017, when the property was mortgaged. Thus, the breaches occurred before October 2018—six-years prior to the date of service. As such, we affirm the district court’s decision to dismiss the breach-of-contract claim on the ground that it was barred by the six-year statute of limitations.

III.

Appellants also dispute the district court’s decision to dismiss their judicial-dissolution claim on the ground that it was time-barred. Under Minn. Stat. § 321.0802 (2024), “[o]n application by a partner the district court may order dissolution of a limited partnership if it is not reasonably practicable to carry on the activities of the limited partnership in conformity with the partnership agreement.”

We conclude that appellants’ request for judicial dissolution was not time-barred. Appellants have a present statutory right to seek judicial dissolution of the partnership.

partner’s own interest.”). Therefore, the argument fails to establish a breach of the partnership agreement.

⁸ It is immaterial for purpose of this analysis that Scott announced the changes under the 2015 amendment at the partnership meeting in 2016 because the statute of limitations begins to run when the breach occurs, not when the appellants became aware of the breach. *See Jacobson*, 627 N.W.2d at 110.

And the complaint alleged the facts necessary to bring such a claim.⁹ As such, we reverse the district court's decision to dismiss appellants' judicial-dissolution claim.

IV.

Appellants further dispute the district court's decision to dismiss their direct and derivative unjust-enrichment claims on the ground that they were time-barred. Under caselaw, unjust-enrichment claims are subject to a six-year statute of limitations. *Block v. Litchy*, 428 N.W.2d 850, 854 (Minn. App. 1988) ("The applicable time limit for bringing an action in unjust enrichment is six years."). And the "some damage" rule applies. *See id.* at 851, 854. But we need not decide whether the unjust-enrichment claims are time-barred because appellants cannot maintain the unjust-enrichment claims as a matter of law. *See Williams v. Nat'l Football League*, 794 N.W.2d 391, 395 (Minn. App. 2011) ("Appellate courts are free to affirm for reasons other than those on which a decision is based."), *rev. denied* (Minn. Apr. 27, 2011).

Unjust enrichment is an equitable claim that only arises when there is no valid contract governing the rights of the parties. *Midwest Sports Mktg., Inc. v. Hillerich & Bradsby of Can., Ltd.*, 552 N.W.2d 254, 268 (Minn. App. 1996), *rev. denied* (Minn. Sept. 20, 1996). In *Stein v. O'Brien*, we concluded that a partner could not maintain an unjust-enrichment claim against another partner for allegedly violating partnership obligations, because the partnership agreement governed the parties' partnership rights and obligations. 565 N.W.2d 472, 474-77 (Minn. App. 1997). Similarly here, appellants may not maintain

⁹ We note that Minn. Stat. § 321.0802 does *not* limit the right to request judicial dissolution to general partners.

their unjust-enrichment claims because there are valid contracts—the partnership agreement, the 2015 amendment and lease agreement, and the promissory note—that completely govern the parties’ rights and obligations regarding the complained-of conduct.

For this reason, we affirm the district court’s decision to dismiss appellants’ unjust-enrichment claims.

V.

Lastly, appellants challenge the district court’s decision to dismiss their declaratory judgment claim on the ground that it was time-barred. Under Minn. Stat. § 555.01 (2024), a court may “declare rights, status, and other legal relations whether or not further relief is or could be claimed.” A declaratory judgment action is a procedural device through which a party’s substantive legal rights may be vindicated so long as a justiciable controversy exists. *See McCaughtry v. City of Red Wing*, 808 N.W.2d 331, 337 (Minn. 2011).

“[A] complaint requesting declaratory relief must present a substantive cause of action that would be cognizable in a nondeclaratory suit.” *Weavewood, Inc. v. S & P Home Inv., LLC*, 821 N.W.2d 576, 579 (Minn. 2012). And a declaratory judgment action “is barred by an applicable statute of limitations to the same extent that the same cause of action would be barred in a nondeclaratory proceeding.” *Id.* at 577. The application of the statutes of limitations “depends on the nature of the wrong alleged in the complaint, *not* on the nature of the relief sought.” *Id.* at 580.

Here, appellants’ substantive claim underlying their declaratory judgment request is a challenge to the validity of two contracts, the lease agreement and HLP’s debt obligation. Specifically, appellants assert that the lease agreement is invalid and unenforceable

because it lacks a default provision, amongst other terms, and the rent is “unconscionably low.” Appellants claim the debt obligation is invalid because it lacks documentation.¹⁰

The six-year statute of limitations in Minn. Stat. § 541.05, subd. 1, applies to actions “based upon a contract or other obligation.” The statute of limitations begins to run when a cause of action accrues.¹¹ See *Frederick v. Wallerich*, 907 N.W.2d 167, 173 (Minn. 2018). A cause of action accrues at “the point in time when a plaintiff can allege sufficient facts to survive a motion to dismiss for failure to state a claim upon which relief can be granted.” *Sec. Bank & Tr. Co. v. Larkin, Hoffman, Daly & Lindgren, Ltd.*, 916 N.W.2d 491, 496 (Minn. 2018) (citation omitted) (internal quotation marks omitted). “[I]gnorance of a cause of action not involving continuing negligence, . . . or fraud, does *not* toll the accrual of a cause of action.” *Karels v. Am. Fam. Mut. Ins. Co.*, 371 N.W.2d 617, 619 (Minn. App. 1985), *aff’d*, 381 N.W.2d 441 (Minn. 1986).

Appellants’ substantive claim underlying the declaratory judgment action relies on the lease agreement (originally executed in 2002 and amended in February 2015), and the debt obligation (first assumed in the 2002 promissory note and incorporated into the 2015 promissory note). We conclude that the limitations period for challenging the validity of these “contracts and other obligations,” began at the time the agreements were executed

¹⁰ Appellants cite no legal theory to support their contention that a debt is invalid merely because there is no documentation. And we note that the 2002 promissory note references, and thereby documents, the “debt owed by [RBF]” to Jim and Mary Anne.

¹¹ We note that under Minn. Stat. § 541.05, subd. 6, where relief is sought based on fraud, the cause of action does not accrue “until the discovery by the aggrieved party of the facts constituting the fraud.” Here, even a broad interpretation of the complaint does not present an allegation of fraud, thus the discovery rule is inapplicable.

or amended because, at that time, appellants could have alleged “sufficient facts to survive a motion to dismiss for failure to state a claim upon which relief can be granted.” Here, the latest amendments occurred in February 2015, so appellants needed to bring their claim on or before February 2021. Therefore, appellants’ declaratory judgment claim is untimely because they did not commence this lawsuit until October 2024. Accordingly, we affirm the district court’s decision to dismiss appellants’ declaratory judgment claim.

* * *

For the foregoing reasons, we affirm the district court’s decision to dismiss the breach-of-fiduciary-duty claims for damages accruing before October 22, 2018, for Scott, Lennea, and RBF, and damages accruing before October 23, 2018, for HLP, the breach-of-contract claim, the unjust-enrichment claims, and the declaratory judgment claim. But we reverse the district court’s decision to dismiss appellants’ judicial-dissolution claim and breach-of-fiduciary-duty claims for damages alleged to have accrued on or after October 22, 2018, for Scott, Lennea, and RBF, and on or after October 23, 2018, for HLP. We remand for further proceedings not inconsistent with this opinion.¹²

Affirmed in part, reversed in part, and remanded.

¹² Because we reverse in part the district court’s decision to grant respondents’ motion for judgment on the pleadings, we do not reach appellants’ argument regarding the district court’s decision to deny their motion to vacate the judgment and amend the complaint.